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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1411

RUNETTE TURNER,
Petitioner,

v.

RONNIE THOMPSON, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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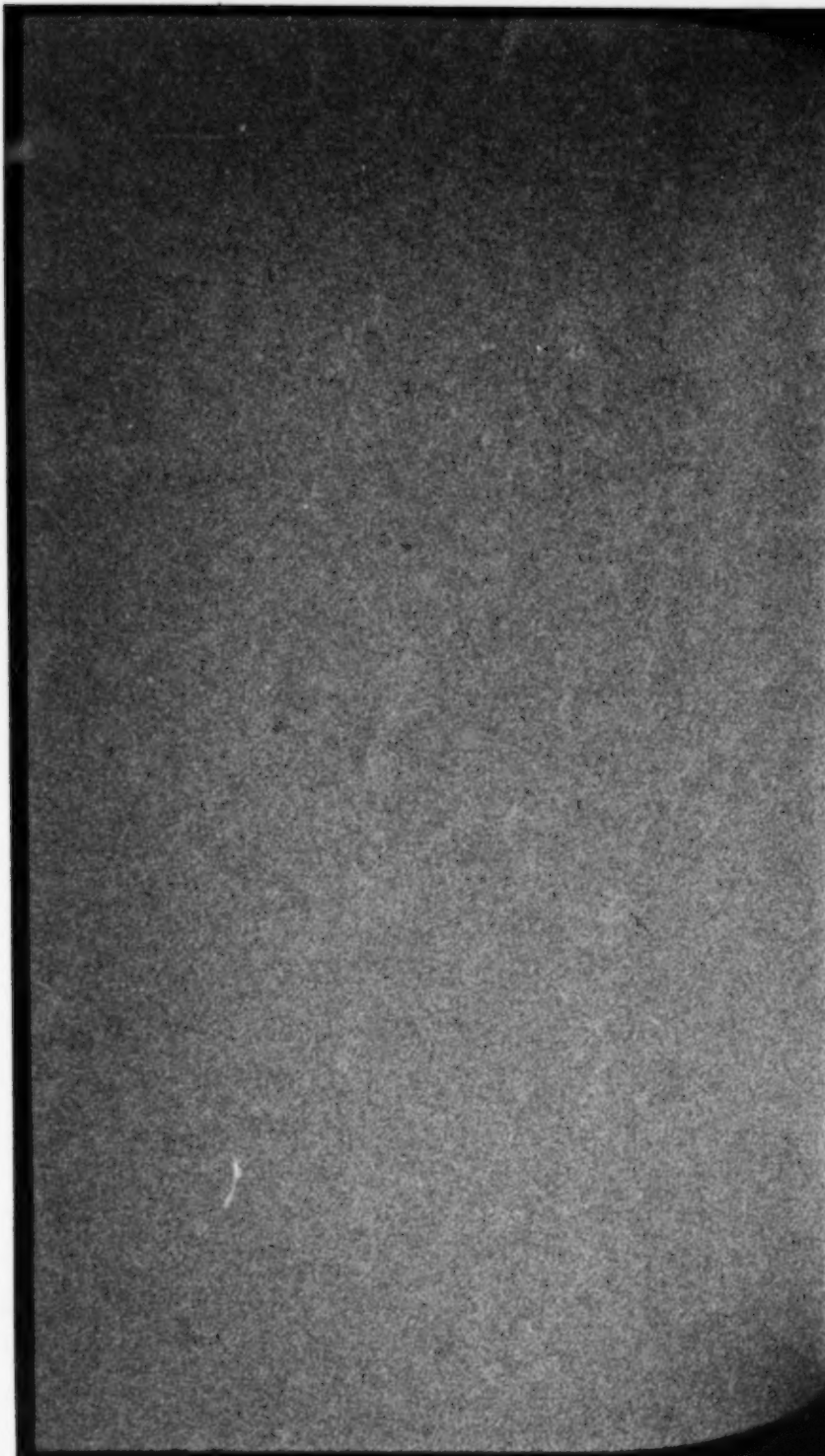

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OPINIONS BELOW

The opinion of the United States Circuit Court for the Fifth Circuit is reported at 421 F. 2d 771. The opinion of the United States District Court for the Middle District of Georgia is not reported but is set out as an appendix at pages 772 and 773 to the Circuit Court opinion set forth above.

JURISDICTION

The judgment of the Court of Appeals was entered on February 9, 1970, and rehearing was denied on March 10, 1970. The petition for certiorari was filed on April 10, 1970. Respondents were granted pursuant to Rule 34, subparagraph 5, an extension of time through May 20, 1970, to file their brief in opposition. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

I

Where a municipality has an ordinance providing that before the minutes of a previous meeting are confirmed the city council may reconsider such prior action, does the withdrawal pursuant to such ordinance of the prior grant of a beer license to petitioner violate constitutional rights of such petitioner?

II

Does the classification by the Circuit Court pursuant to Rule 38 of the Federal Rules of Appellate Procedure of petitioner's appeal as frivolous call for the exercise of this Court's power of supervision?

STATEMENT OF THE CASE

Petitioner sought and obtained from respondents, the Mayor and City Council of the City of Macon, Georgia, a license to sell package beer at retail in her store (R. 29, 31). This action was taken by respondents at their regular weekly meeting on May 6, 1969 (R. 30, 31).

At the next regular meeting of Mayor and Council on May 13, 1969, it appeared that residents of the neighborhood in which petitioner's store was located had not known of petitioner's application prior to its consideration on May 6, 1969 (R. 53, 54). This was apparently because the notice of such application had not been published in the local newspaper as had been the informal custom at that time (R. 53, 54). Many residents of the neighborhood appeared at the meeting of City Council on May 13, 1969, to protest the sale of beer in the neighborhood (R. 53, 58).

When the neighborhood protest was noted at the meeting on May 13, 1969, respondents invoked the provisions of City Ordinance Section 2-17 as follows:

> "Reconsideration. Before the minutes of any previous meeting of council are confirmed, any member may call for a reconsideration of the action of council relative to the same, and such business shall be first in order" (R. 52, 53, 62, 63).

The grant of the license to petitioner was thus reconsidered and the action of the previous meeting in regard to the license was rescinded (R. 95, 96). The chairman of the Alcohol Control Committee stated that a public hearing would be held on petitioner's application for a beer license (R. 97). This was communicated to petitioner but neither petitioner nor her attorney ever requested that such hearing be held (R. 41, 42). Instead petitioner

commenced her action in the United States District Court for the Middle District of Georgia, seeking a declaratory judgment and injunctive relief against respondents (R. 2-15).

A trial on the merits was held before Chief Judge W. A. Bootle, United States District Court for the Middle District of Georgia, on August 26, 1969 (R. 28, et seq.). His opinion finding for respondents was filed September 5, 1969 (R. 72, et seq.). Judgment followed on September 11, 1969 (R. 75). Petitioner appealed to the United States Circuit Court for the Fifth Circuit which affirmed unanimously on February 9, 1970. Rehearing was denied on March 10, 1970.

ARGUMENT

I

Petitioner contends the opinion of the United States Court of Appeals for the Fifth Circuit in the instant case is in conflict with opinions of the United States Court of Appeals for the District of Columbia. She relies primarily on the case of **In re Carter**, 177 F. 2d 75. The **Carter** case stands for the proposition that a mid-term revocation of a bondsman's license cannot be accomplished without a hearing fulfilling the requirements of due process.

In the instant case, however, petitioner's license was not revoked but its grant was reconsidered and rescinded pursuant to the provisions of the ordinance of the City of Macon, Section 2-17, *supra*, pending a public hearing by the Alcohol Control Committee. The ordinance was admitted on the trial in the District Court without objection (R. 68, 85). Petitioner has not availed herself of the opportunity for a public hearing on the merits of her application.

The other two cases from the United States Court of Appeals for the District of Columbia cited by petitioner as in conflict with the Circuit Court opinion in the instant case clearly evidence no such conflict. Indeed, neither are apposite to the issues here. **Jordan v. United Insurance Company of America**, 289 F. 2d 778, deals with the narrow question whether on the refusal of a certificate of authority to an insurance company the District Court could hold a trial *de novo* or whether such Court was confined to a review of the administrative record. **Minkoff v. Payne et** al., 210 F. 2d 689, affirmed a holding by the United States District Court for the District of Columbia that the decision of the Alcohol Beverage Control Board to deny re-

newal of an alcoholic beverage license on the grounds of lack of good moral character of the applicant was proper.

Petitioner contends further that the actions of respondents in the instant case as approved by the decision of the United States Circuit Court of Appeals for the Fifth Circuit are contrary to the principals of procedural due process as previously enunciated by that Court and as stated by this Court.

We submit the record is clear that petitioner was not denied procedural due process. The grant to her on May 6, 1969, of a beer license was only a provisional grant until the minutes of the meeting of May 6, 1969, were approved at the next meeting on May 13, 1969. Until such time, the action of May 6, 1969, could be reconsidered and rescinded. This was in accordance with the City's ordinance, Section 2-17, *supra*. Such action was reconsidered and the license rescinded pending a public hearing on the merits.

There is no suggestion that respondents discriminated against petitioner. Indeed, subsequent to the rescission of her license as aforesaid, petitioner was granted a beer license by respondents at another location (R. 43).

Her forum in the instant case is, we submit, before the appropriate committee and council of the City of Macon and not in this Court.

II

Petitioner contends this Court should review the action of the United States Court of Appeals for the Fifth Circuit in classifying her appeal there as frivolous. Such a proposition would, we submit, require a review by this Court of all such findings by all Circuit Courts of this country. It would, in effect, eliminate this Court's traditional considerations relative to review on writ of certiorari and would make its grant one of right rather than sound judicial discretion.

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CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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Certificate of Service

I, John B. Harris, Jr., counsel of record for the respondents, do certify that I have this date served the petitioner with the Brief of Respondents in Opposition to the Petition for Certiorari by depositing a true copy thereof in a United States mail box with first class postage prepaid, addressed to counsel of record for petitioner, namely, Floyd M. Buford, at his post office address, 165 First Street, Macon, Georgia 31201; and to Manley F. Brown, at his post office address, 549 Mulberry Street, Macon, Georgia 31201.

This 13th day of May, 1970.

John B. Harris, Jr.